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IN THE

Supreme Court of the United States

October Term, 1953-1954

No. .....

SALSBURY MOTORS, INC., Whose Name Has Been Changed to Wayne Manufacturing Co.,

Petitioner,

vs.

UNITED STATES OF AMERICA, GEORGE T. GOGGIN, Receiver of Salsbury Motors, Inc., Debtor,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Salsbury Motors, Inc., whose name has been changed to Wayne Manufacturing Co., as your petitioner, respectfully prays that a writ of certiorari issue to review a judgment entered on January 27, 1954, in the United States Court of Appeals for the Ninth Circuit, in case No. 13,379, entitled: Salisbury Motors, Inc., Whose Name Has Been Changed to Wayne Manufacturing Co., Appellant, vs. United States of America, George T. Goggin, Receiver of Salsbury Motors, Inc., Debtor, Appellees; George T. Goggin, Receiver in Bankruptcy of the Estate of Salsbury Motors, Inc., Debtor, Appellant, vs. Salsbury Motors, Inc., Whose Name Has Been Changed to Wayne Manufacturing Co., and United States of America, Appellees.

Questions Presented.

Question 1.

Is the Collector of Internal Revenue bound by the terms of a final order confirming a debtor's plan of arrangement in respect to a tax claim that arose prior to the bankruptcy proceeding and which the Collector sought to assert against the debtor after the debtor had been restored to the possession of its assets, where the plan of arrangement provided and the order approving the same provided that the debtor was restored to possession of its assets, free and clear of all creditors' claims, and giving to said creditors holding dischargeable and non-dischargeable claims the right to assert such claims against the cash paid to the receiver and disbursing agent by the debtor corporation under the plan of arrangement?

Question 2.

Did the bankruptcy court have the jurisdiction to enter an order enjoining the Collector from collecting from a reorganized debtor a claim existing at the date of the filing of the petition in bankruptcy? Did jurisdiction exist in the bankruptcy court to determine the amount and validity of the claim and directing its payment from the funds held by the bankruptcy court?

Question 3.

Does the bankruptcy court in a Chapter 11 proceeding have jurisdiction to require creditors holding non-dischargeable claims to look to the funds in the hands of the court for the payment of their claims and enjoin them from asserting the same against the reorganized debtor?

Statement of Facts.

Briefly stated, the facts upon which the foregoing questions arose were stipulated to in the lower court and are as follows:

(The statement of facts following is digested from the opinion of the Honorable Court of Appeals for the Ninth Circuit.)

Salsbury Motors proposed a second amended plan of arrangement which was confirmed by the bankruptcy court and the order confirming the same became final. The plan and order provided that (quoting from Circuit Court's decision):

> "the assets of the debtor were vested in and adjudged to be the property of the debtor corporation free and clear of all liens, claims and rights of all creditors and persons, and free and clear of all claims of dischargeable and non-dischargeable debts . . . except the lien of the Bank which advanced $550,000 on the security of those assets, such sum being placed in the hands of the receiver who, as disbursing agent, was to pay creditors' claims therefrom. The order recited 'that this court retains and reserves jurisdiction to determine the amount and validity of all claims of creditors, both secured and unsecured, and the classification of said claims, and all objections that have heretofore been made or that may be made in regard thereto, with a like effect and power as if the above named debtor had been adjudged a bankrupt. . . .' It was ordered that the receiver pay to creditors their liens and claims 'in order that the assets ordered to be delivered to the debtor may be delivered . . . free and clear of such liens and claims, . . . and all secured and unsecured creditors and other parties are hereby enjoined from interfering with or asserting

any claim to any of the assets being vested in the debtor corporation under the Second Amended Plan of Arrangement and this order confirming the same.' "

The Collector of Internal Revenue was scheduled as a creditor and was paid from the funds provided by the debtor corporation under its plan of arrangement all claims so filed. After the expiration of one year the Collector filed an additional claim of $17,806.27 plus interest, which claim was, upon objections being made by the receiver, withdrawn.

The Collector then levied an assessment under the provisions of the Internal Revenue Code, Section 3780-c, against the reorganized debtor and the same became a lien against all of the debtor's assets.

The debtor corporation petitioned the bankruptcy court alleging that the receiver held sufficient funds to satisfy any proper tax claim and to permit the Collector to collect from the debtor the asserted claim was in violation of the Second Amended Plan of Arrangement. The petition sought an injunction enjoining the Collector from asserting any claims against the debtor corporation and requiring that the claim be paid from the assets in the hands of the receiver. The bankruptcy court enjoined the Collector from pursuing the debtor corporation; the order was reversed by the District Court, the District Court's opinion is reported in 104 Fed. Supp. 482. The United States Court of Appeals for the Ninth Circuit affirmed the opinion of the District Judge, except that it deleted that portion of the opinion which provided that

"It would appear that if and when the Collector of Internal Revenue collects the money due from the

corporation, the corporation would then have the right to demand reimbursement from money in the hands of the receiver, as the receiver now has the money on hand, and it was the intention that the claim of the government for the overpayment of refund be paid" (104 Fed. Supp. 486).

The Circuit Court further directs that the receiver proceed with closing the estate without withholding funds to satisfy the claim of the debtor in the event the debtor satisfies the Collector's claim and seeks reimbursement from the bankruptcy court.

The Circuit Court bases its decision upon the ground that the bankruptcy court was not concerned with subsequently acquired assets of the debtor corporation and that it had no jurisdiction or authority over them, relying upon the case of *Bank of Elberton v. Swift* (5th Cir.), 268 Fed. 305, and *Local Loan Co. v. Hunt*, 292 U. S. 234, 243.

This court, in the last mentioned case, squarely held contrary to the interpretation placed thereon by the Circuit Court in that the bankruptcy court has such jurisdiction.

The Circuit Court further based its decision upon the fact that the debt of the Collector was a non-dischargeable debt and that the Collector was entitled, under Internal Revenue Code Section 3643, to assess the same against the reorganized debtor in violation of the order confirming the plan and the injunction contained therein.

Reasons Relied Upon for Allowance of Writ.

It is respectfully submitted by your petitioner and relied upon as reasons for the granting of the writ sought herein that:

(a) The acts of the Court of Appeals for the Ninth Circuit in holding that the Collector of Internal Revenue cannot be bound as a creditor by an order confirming a plan of arrangement but his claim may be enforced under Section 3780(c) of the Internal Revenue Code, is contrary to the Bankruptcy Act and defeats the purpose and scope of the Bankruptcy Act as defined by Congress, particularly Section 307 of the Bankruptcy Act, 11 U. S. C. A. 707, subdivisions 1 and 2 thereof; Section 367 of the Bankruptcy Act, 11 U. S. C. A. 767, subdivision 1.

(b) It was the intent of Congress that Section 3780(c) of the Internal Revenue Code have no application to a proceeding in bankruptcy, and the Bankruptcy Court should have jurisdiction to deal with tax claims existing at the time of the filing of the bankruptcy proceeding, determine their validity and direct the manner of payment (Sec. 64, subd. 4 of Bankruptcy Act).

See:

Gardner v. New Jersey, 329 U. S. 565, 67 S. Ct. 467;

Case v. Los Angeles Lumber Products Co., 308 U. S. 106, 130, 60 S. Ct. 1, 14;

Dayton v. Stanard, 241 U. S. 588, 36 S. Ct. 695;

Isaacs v. Hobbs Tie & Timber Co., 282 U. S. 734, 51 S. Ct. 270.

(c) The acts of the Court of Appeals for the Ninth Circuit are of peculiar public interest and present a fundamental question of law upon which there should be no

diversity of opinion in the several courts of appeal in that reorganization proceedings under Chapter 11 of the Bankruptcy Act are of importance to the nation in that it is a matter of public interest to rehabilitate distressed debtors.

The decision is in direct conflict with *In re New York, H. H. & H. R. Co.*, 197 F. 2d 428 (2d C. C. A.).

If the Bankruptcy Court is deprived of jurisdiction to deal with tax claims or non-dischargeable debts, creditors holding such claims, by not participating in the plan, cannot be enjoined from pursuing the reorganized debtor, with the result that lending institutions and persons investing capital will be apprehensive of advancing funds to effect the reorganization since they will have no protection from the court against the contingent and non-dischargeable debts and the bankruptcy court's efforts to rehabilitate the debtor will be seriously impaired and the broad powers given by Congress defeated.

(d) The decision of the Court of Appeals for the Ninth Circuit is in conflict with and decides a federal question in conflict with applicable decisions of this court and said decision departs from usual and accepted courses of judicial proceedings in bankruptcy which adversely affect the administration of reorganization proceedings throughout the nation. The decision is in conflict with the decisions of this court in:

Van Huffel v. Harkelrode, 52 S. Ct. Rep. 115, 280 U. S. 225;

Gardner v. State of New Jersey, 329 U. S. 567, 67 S. Ct. 467;

Local Loan Co. v. Hunt, 292 U. S. 234, 54 S. Ct. 695;

Stoll v. Gottlieb, 305 U. S. 165, 59 S. Ct. Rep. 134.

Wherefore, your petitioner prays that a writ of certiorari be isssued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the Ninth Circuit, directing that court to certify and send to this court for its review and determination, on a day certain to be named, a full and complete transcript of the record and all proceedings in the case No. 13379 and entitled on its docket: Salsbury Motors, Inc., Whose Name Has Been Changed to Wayne Manufacturing Co., Appellant, vs. United States of America, George T. Goggin, Receiver of Salsbury Motors, Inc., Debtor, Appellees,—George T. Goggin, Receiver in Bankruptcy of the Estate Salsbury Motors, Inc., Debtor, Appellant, vs. Salsbury Motors, Inc., Whose Name Has Been Changed to Wayne Manufacturing Co., and United States of America, Appellees, and that the judgment of said court be reversed by this Honorable Court, and that your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

Dated: March 10th, 1954.

SALSBURY MOTORS, INC., Whose Name Has Been Changed to Wayne Manufacturing Co.,

By GEORGE R. MAURY,

Counsel for Petitioner.

FRANCIS B. COBB,

Of Counsel for Petitioner.

IN THE

Supreme Court of the United States

October Term, 1953-1954

No. .....

SALSBURY MOTORS, INC., Whose Name Has Been Changed to Wayne Manufacturing Co.,

Petitioner,

vs.

UNITED STATES OF AMERICA, GEORGE T. GOGGIN, Receiver of Salsbury Motors, Inc., Debtor,

Respondents.

Brief in Support of Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Opinions of Lower Courts.

The District Court's opinion is reported in 104 Fed. Supp. 482; the opinion of the United States Court of Appeals for the Ninth Circuit was filed on January 27, 1954, and is attached to the certified record from the Circuit Court.

Jurisdiction.

The judgment of the United States Court of Appeals for the Ninth Circuit was filed on January 27, 1954. No petition for rehearing in that court was filed. This petition for writ of certiorari is filed within three months after the filing of the judgment of the United States Court of Appeals for the Ninth Circuit.

The jurisdiction of this court is invoked under Section 24, subdivision (c) of the Bankruptcy Act, United States Code, Title 11, Chapter 4, Section 47(c) (made applicable to Chapter 11 proceedings by Section 316 of the Bankruptcy Act, United States Code, Title 11, Chapter 11, Section 716), also under Article 3, Section 2 of the Constitution and Section 4 of Title 11 of the Judicial Code, 28 U. S. C. A. 1254.

Statement of the Case.

The essential facts of the case herein are stated in the accompanying petition for writ of certiorari and in the interest of brevity are not repeated herein.

Specifications of Errors.

The United States Court of Appeals for the Ninth Circuit erred in each of the following particulars:

1. In holding that the Collector of Internal Revenue was not bound as a creditor by the terms of a final order confirming a debtor's plan of arrangement which transferred non-dischargeable claims to the funds in the hands of the bankruptcy court with reserved jurisdiction to determine its validity and direct its payment.

2. In holding that the Collector of Internal Revenue could proceed under Section 3780(c) of the Internal Revenue Code to assess and collect from the reorganized debtor a claim existing prior to the bankruptcy proceeding and dealt with therein.

3. In refusing to require the bankruptcy court to determine the amount and validity and direct the payment of a tax claim from funds held by the receiver under a plan of arrangement which provided for such determination and payment.

4. The Circuit Court erred in holding that the bankruptcy court had no jurisdiction to protect its final order confirming the plan of arrangement by an injunction against a creditor, whose claim existed at the time the petition was filed, from pursuing the reorganized debtor, contrary to the injunctive provisions of the order confirming the plan of arrangement.

5. The Circuit Court erred in holding that the Collector of Internal Revenue could collect its claim from after acquired property of a reorganized debtor and the bankruptcy court had no jurisdiction to prevent such act, even though the same was in violation of a debtor's plan of arrangement and the court's order approving the same.

Argument and Authorities in Support of Petition.

It was the intent of Congress to give to the bankruptcy court the exclusive jurisdiction to deal with all tax creditors' claims to determine their validity and direct their manner of payment (Sec. 64(4) of Bankruptcy Act, U. S. C., Tit. 11, Ch. 7, Sec. 104, subd. 4). "That, in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court." Statutory law on arrangements is found in Sections 367 to 371 of the Bankruptcy Act, 11 U. S. C. A. 707, subdivisions 1 and 2; Section 367, subdivisions 1 to 4, 11 U. S. C. A. 767, which sections provide as follows:

> "Sec. 367. Upon confirmation of an arrangement—
>
> "(1) the arrangement and its provisions shall be binding upon the debtor, upon any person issuing securities or acquiring property under the arrangement and upon all creditors of the debtor, whether or not they are affected by the arrangement or have

accepted it or have filed their claims, and whether or not their claims have been scheduled or allowed and are allowable;

"(2) the money deposited for priority debts and for the costs and expenses shall be disbursed to the persons entitled thereto;

"(3) the consideration deposited, if any, shall be distributed and the rights provided by the arrangement shall inure to the creditors affected by the arrangement whose claims are not barred by the provisions of section 354 of this Act, and (a) have been proved prior to the date of confirmation and are allowed, or (b) whether or not proved, have been scheduled by the debtor as fixed liabilities, liquidated in amount, and are not disputed; and

"(4) except as otherwise provided in sections 369 and 370 of this Act, the case shall be dismissed.

"Sec. 368. The court shall retain jurisdiction, if so provided in the arrangement.

"Sec. 369. The court shall in any event retain jurisdiction until the final allowance or disallowance of all debts, affected by the arrangement and not barred by the provisions of section 352 of this Act, which—

"(1) have been proved, but not allowed or disallowed, prior to the date of confirmation; or

"(2) are disputed or unliquidated, have been scheduled by the debtor, and are proved within such time as the court may direct; or

"(3) arise from the rejection of executory contracts by the debtor and are proved within such time as the court may direct.

"Sec. 370. Upon the allowance of any debts specified in paragraphs (1), (2), and (3) of section 369

of this Act, the consideration, if any, deposited for them shall be distributed and the rights provided by the arrangement shall inure to the creditors to whom such debts are owing."

Section 307 of the Bankruptcy Act, 11 U. S. C. A. 707, provides:

"Sec. 307. Unless inconsistent with the context and for the purposes of an arrangement providing for an extension of time for payment of debts in full and applicable exclusively to the debts to be extended—

"(1) 'creditors' shall include the holders of all unsecured debts, demands, or claims of whatever character against a debtor, whether or not provable as debts under section 63 of this Act and whether liquidated or unliquidated, fixed or contingent; and

"(2) 'debts' or 'claims' shall include all unsecured debts, demands, or claims of whatever character against a debtor, whether or not provable as debts under section 63 of this Act and whether liquidated or unliquidated, fixed or contingent."

Section 397 of the Bankruptcy Act, 11 U. S. C. A. 798, provides:

"Sec. 397. Any provision in this chapter to the contrary notwithstanding, all taxes which may be found to be owing to the United States or any State from a debtor within one year from the date of the filing of a petition under this chapter, and have not been assessed prior to the date of the confirmation of an arrangement under this chapter, and all taxes which may become owing to the United States of any State from a receiver or trustee of a debtor or from a debtor in possession, shall be assessed against, may be collected from, and shall be paid by the debtor or the corporation organized or made use of

for effectuating an arrangement under this chapter: Provided, however, That the United States or any State may in writing accept the provisions of any arrangement dealing with the assumption, settlement, or payment of any such tax."

Section 371 of the Bankruptcy Act, 11 U. S. C. A. 771, provides:

> "Sec. 371. The confirmation of an arrangement shall discharge a debtor from all his unsecured debts and liabilities provided for by the arrangement, except as provided in the arrangement or the order confirming the arrangement, including the claims specified in Section 354 of this Act, but excluding such debts as, under Section 17 of this Act, are not dischargeable."

The last mentioned section excludes from the effect of a discharge, debts as—under Section 17, are not dischargeable (tax claims are not dischargeable under Section 17) and "except as provided for by the arrangement or the order confirming the arrangement."

The reason for this rule has been stated by this court in the case of *Gardner v. State of New Jersey*, 329 U. S. 565, 67 S. Ct. 467, as follows:

> "We noted in Case v. Los Angeles Lumber Products Co., 308 U. S. 106, 130, 60 S. Ct. 1, 14, 84 L. Ed. 110, that one useful and fitting function of a reorganization court was the compromise or settlement of claims, so that interminable litigation might be ended and the interests of expedition in promulgating a plan of reorganization served. That power, expressly included in the Bankruptcy Act and governed by our General Order No. 33 is part of the broad authority granted the reorganization court by 77."

The Bankruptcy Act makes no distinction between taxes due the United States or any state or subdivision thereof. Section 64(4) of the Bankruptcy Act, United States Code, Title 11, Chapter 7, Section 104, subdivision 4.

The terms of the plan of arrangement are in the nature of a contract and the order confirming the same is in the nature of a judgment in *rem* which may be pleaded in *res adjudicata.*

Stoll v. Gottlieb, 305 U. S. 165, 59 S. Ct. 134;

In re New York, N. H. & H. R. Co., 195 F. 2d 428.

In the last mentioned case the City of New York claimed liens on property of a railroad corporation which had been reorganized under the Bankruptcy Act, but did not file any claim throughout the reorganization proceedings, which endured for several years. The Court held that under the provisions of the Bankruptcy Act and the confirmed reorganization plan, the claims were barred and the property of the debtor released from the reorganization proceedings was free of the claimed liens of the City of New York. The decision was *per curiam* (with Circuit Judge Frank dissenting). The majority adopted the opinion of the District Court in the same case reported at 105 Fed. Supp. 413. That opinion shows that the confirmed reorganization plan contained the following language (105 Fed. Supp. at 417):

> "The entire property . . . of the debtor . . . shall vest in and become the absolute property of the reorganized debtor free and clear of all claims . . . liens . . . of creditors . . ."

That language is almost identical to the language contained in the confirmation order in the instant case [Tr. p.

23]. The opinion in the *New York, N. H. & H. R. Co.* case shows that the City of New York asserted its claim against the debtor at all times before, during and after the Chapter X proceedings. However, it neglected to file any claim in the reorganization proceedings on the theory (which was held to be erroneous) that its lien was protected independently of the bankruptcy proceedings. The court ruled, however, that the failure to file a claim within the permitted time limitations barred the city from asserting the claim, not only against the estate in bankruptcy, but also against the reorganized and discharged debtor.

The Circuit Court in this matter adopted the opinion of the District Court, including paragraph IV [Tr. p. 97] as follows:

> "That as the Collector of Internal Revenue is seeking to collect this assessment from the assets of the debtor, the Bankruptcy Court has no jurisdiction to determine the validity of the assessment in question. However, this Conclusion of Law shall not limit the right of the debtor to contest the validity of the tax after it is paid pursuant to the applicable provision of the Internal Revenue Code."

The plan of arrangement and order confirming the same retained jurisdiction in the District Court. Article VI [Tr. p. 17]. The order confirming the arrangement [Tr. p. 24] provided:

> "this court retains and reserves jurisdiction to determine the amount and validity of all claims of creditors . . . with a like effect . . . as if the . . . debtor had been adjudged a bankrupt and George T. Goggin were the acting trustee in bankruptcy." [Tr. p. 24].

The plan of arrangement and the order approving the same transferred the rights of the non-dischargeable claims from the debtor to the funds in the hands of the Receiver in Bankruptcy and relieved the debtor thereof, and as stated by Justice Brandeis in *Van Huffel v. Harkelrode,* 52 S. Ct. 115, 116, 284 U. S. 225:

> "No good reason is suggested why liens for state taxes should be deemed to have been excluded from the scope of this general power to sell free from encumbrances. Section 64 of the Bankruptcy Act (11 U. S. C. A. Sec. 104) grants to the court express authority to determine 'the amount or legality' of any tax. To transfer the lien from the property to the proceeds of its sale is the exercise of a lesser power; and legislation conferring it is obviously constitutional. Realization upon the lien created by the state law must yield to the requirements of bankruptcy administration. Compare International Shoe Co. v. Pinkus, 278 U. S. 261, 49 S. Ct. 108, 73 L. Ed. 318; Isaacs v. Hobbs Tie & Timber Co., 282 U. S. 734, 51 S. Ct. 270, 75 L. Ed. 645; Straton v. New, 283 U. S. 318, 51 S. Ct. 465, 75 L. Ed. 1060. In many of the cases in the lower federal courts the order of sale entered was broad enough to authorize a sale free from tax liens as well as from others; and in some of them it appears affirmatively that liens for taxes were treated as discharged by the order. No case has been found in which the power to sell free from the lien of state taxes was denied."

The bankruptcy court has the power to enforce by injunction as a court of equity its orders and require other parties and courts to give full faith and credit thereto. See *Local Loan Co. v. Hunt,* 292 U. S. 234, 54 S. Ct. 695. This rule has been applied to after-acquired property. See *Local Loan v. Hunt, supra.*

Section 3780, subd. (c) of the Internal Revenue Code has no application to a proceeding in bankruptcy nor may the Collector proceed under the summary proceeding of the Revenue Code since the bankruptcy court's jurisdiction to deal with taxes, determine their validity, and direct their manner of payment, has been provided by the acts of Congress and has been upheld by this court in the following cases:

Case v. Los Angeles Lumber Products Co., 308 United States 106, 130, 60 S. Ct. 1, 14;
U. S. 106, 130, 60 S. Ct. 1, 14;

Dayton v. Stanard, 241 U. S. 588, 36 S. Ct. 695;

Isaacs v. Hobbs Tie & Lumber Co., 282 U. S. 734, 51 S. Ct. 270.

In the case of *United States v. Coast Wineries* (C. C. A. 9th Cir.), 131 F. 2d 643, 648, this court has stated the rule:

> "In the very same order, and as a part thereof, the court further ordered 'that any and all claims which the United States Government has, or may hereafter have or assert, if any, against the proceeds from the sale of said property in the hands of the Trustee, and the validity, amount and priority thereof shall hereafter be determined by the Court.' Claims for the taxes sought to be recovered in this action were disallowed first by order of December 21, 1936, and again by the order of November 12, 1937, from neither of which was there any appeal.
>
> "Subject to the right to obtain a re-examination on review, an order disallowing a claim in bankruptcy is binding and conclusive on all parties or their privies, and being in the nature of a final judgment, furnishes a basis for a plea of *res judicata*. 8 C.

J. S., Bankruptcy, p. 1314, Sec. 444; *In re Anderson*, 2 Cir., 279 F. 525; *United States v. American Surety Co.*, 2 Cir., 56 F. 2d 734; *In re Universal Rubber Products Co.*, D. C., 25 F. 2d 168. The judgment decrees, and orders of the bankruptcy court in bankruptcy matters possess all the attributes of finality and estoppel accorded to judgments from courts of general original jurisdiction. Remington on Bankruptcy, 4th ed., Vol. 5, Sec. 2312.75, p. 459."

Conclusion.

The lower court had jurisdiction to approve an arrangement transferring the non-dischargeable claim of the Collector to the funds held by the receiver and "protecting the debtor and the assets so returned from suits and claims."

The injunctive provision of the plan of arrangement and the order of the referee were proper, and are specifically provided for under Section 372 of the Bankruptcy Act, 11 U. S. C. A. 772.

The bankruptcy court had jurisdiction to make the order and it was its duty to see that its order was recognized.

Jurisdiction was reserved to determine the amount and validity of tax claims existing at the date of the filing of the original petition and this reserved jurisdiction has not been surrendered or lost.

To permit the decision sought to be reviewed to stand will enable creditors having tax claims or other non-dischargeable claims to avoid the bankruptcy proceeding and the jurisdiction of the bankruptcy court to adjudicate and determine their claims and direct their manner of payment, which is specifically provided for by Section 64

(4) of the Bankruptcy Act, and permit them to benefit by waiting until the bankruptcy court has completed the reorganization proceeding, received the new capital and then such creditors satisfy their claims with penalties, all in violation of the spirit and letter of the Bankruptcy Act and the administration that has heretofore been accepted as sound judicial proceedings by the other Circuit Courts and by this Court.

In view of all that appears herein and for the reasons herein specified it is respectfully prayed that this Honorable Court take jurisdiction in the premises.

GEORGE R. MAURY,
Counsel for Petitioner.

FRANCIS B. COBB,
Of Counsel for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 638

SALSBURY MOTORS, INC., WHOSE NAME HAS BEEN CHANGED TO WAYNE MANUFACTURING CO., PETITIONER

v.

UNITED STATES OF AMERICA, GEORGE T. GOGGIN, RECEIVER OF SALSBURY MOTORS, INC., DEBTOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 51-60) is reported at 104 F. Supp. 482. The opinion of the Court of Appeals (R. 110-121) is reported at 210 F. 2d 171.

JURISDICTION

The judgment of the Court of Appeals was entered on January 27, 1954. (R. 122-123.) The peti-

tion for a writ of certiorari was filed on March 12, 1954. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTION PRESENTED

Prior to the institution of proceedings under Chapter XI of the Bankruptcy Act, the debtor had applied for and received a refund of tax based on a tentative carry-back adjustment. Subsequent to the confirmation of a plan of arrangement under Chapter XI, the Commissioner assessed a deficiency attributable to the fact that the taxpayer had claimed and received an excessive refund.

The question is whether, as the Court of Appeals, affirming the District Court, held, the Collector of Internal Revenue could not be restrained by the referee in bankruptcy from collecting the assessment out of property acquired subsequent to the bankruptcy proceedings.

STATUTES INVOLVED

The pertinent statutory provisions are set forth in the Appendix, *infra*, pp. 9-10.

STATEMENT

This case involves federal income tax liability in the amount of $17,806.27 asserted against the taxpayer, a California corporation, sometimes referred to as the debtor. The pertinent facts are undisputed and, substantially as found by the District Court (R. 93-96), may be stated as follows:

The debtor filed a petition under Chapter XI of the Bankruptcy Act on August 20, 1947. The Col-

lector of Internal Revenue was shown as a creditor in schedules filed in the proceeding and claims were filed by him which were thereafter paid in full under the amended plan of arrangement. An amended plan of arrangement, proposed by the debtor, was confirmed on July 30, 1948. The debtor paid the consideration provided for in the order of confirmation to the disbursing agent; the latter paid all prior claims and a dividend to general creditors, and now has on hand sufficient funds to pay the asserted claim for taxes of $17,806.27. (R. 93.)

The debtor corporation on February 24, 1947, filed an application for a tentative carry-back adjustment as a result of a net operating loss in the calendar year 1946 and received a refund thereon prior to the filing of the Chapter XI proceedings. In December 1949, more than one year after the filing of proceedings under Chapter XI, the Commissioner of Internal Revenue audited the tax returns and application for tentative carry-back of the debtor and disallowed certain items, issuing a letter of proposed assessment to the receiver and disbursing agent. On January 17, 1950 (R. 49), the Collector of Internal Revenue filed an amended claim in bankruptcy as to the assessment resulting from the overpayment on the refund to the debtor in the amount of $17,806.27, plus interest thereon. On March 1, 1950, the Collector withdrew the claim before objections were filed because the claim was not considered timely filed. On March 1, 1950, the Commissioner of Internal Revenue assessed the

sum of $17,480.73 against the debtor under the provisions of Section 3780(c) of the Internal Revenue Code. (R. 93-94.)

On or about November 1, 1950, the Collector of Internal Revenue sought to collect the tax assessment from the debtor and its assets, and the debtor filed a petition for an order to show cause and a restraining order (R. 26-31) with the bankruptcy court (R. 94-95).

The plan of arrangement and the order approving it provided that assets in possession of George T. Goggin, as receiver, be returned to the debtor corporation free and clear of all liens, claims and rights of all secured or unsecured creditors, and free and clear of all claims of dischargeable and non-dischargeable debts, and that any such liens and claims should be asserted against the money received by George T. Goggin, as receiver, under the debtor's second amended plan of arrangement. All persons and parties were given the right to file a claim with the court and be paid from the funds in the hands of the receiver, in such amounts as the court might adjudge and determine, and the court further enjoined all persons from interfering with or asserting any claims against the debtor corporation. (R. 95.)

The assets received by the debtor under the second amended plan of arrangement have been replaced in part and increased in part in the ordinary and customary course of business of the debtor. (R. 95.)

In the income tax returns for the calendar years 1948 and 1949 filed by Salsbury Motors, Inc., whose name has been changed to Wayne Manufacturing Company, that corporation used a net operating loss carry-forward from 1947 in computing its taxable income for those years. (R. 95-96.)

In the debtor's proceedings for an injunction, the referee in bankruptcy entered an order restraining the Collector from asserting a claim of $17,806.27 or filing any liens against the taxpayer, (R. 37), thereby preventing the collection of the tax assessment as to the amount erroneously refunded (R. 96.)

A petition was filed for review of the referee's restraining order by the District Court (R. 38-44), and, thereafter, the District Court rendered its opinion (R. 51-60), findings of fact, conclusions of law and its order (R. 92-97) reversing and dissolving the referee's restraining order. Upon appeal by the debtor, the Court of Appeals for the Ninth Circuit affirmed the District Court.* (R. 110-123.)

ARGUMENT

1. The Court of Appeals was correct in concluding that the order of the referee in bankruptcy, which restrained and enjoined the Collector from

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* There was also presented to the Court of Appeals a cross-appeal by the receiver in bankruptcy from the order of the District Court in so far as the order failed to expressly release the receiver and the estate from the claims of the United States and the debtor corporation. (R. 99.) This issue, which was resolved by the Court of Appeals in favor of the receiver (R. 119-121), is not presented for review by this Court.

asserting the tax claim involved and filing any liens against the debtor, was improper, and, accordingly, in affirming the District Court's reversal and dissolution of the restraining order. The appellate court based its narrow holding squarely upon the admitted fact that the debtor has property which it has acquired subsequent to the bankruptcy proceedings. Since these after-acquired assets were never a part of the estate in bankruptcy, and were not vested in the debtor under the plan of arrangement, it follows that they could derive no protection from the order of confirmation of the debtor's second amended plan of arrangement (R. 21-25), which merely enjoined any interference with or the assertion of any claim to any of the assets vested in the debtor under the plan of arrangement. Generally, only property of a bankrupt prior to the filing of a petition comes within the control of the bankruptcy court, and after-acquired property does not. Section 70 of the Bankruptcy Act, as amended; *Bank of Elberton* v. *Swift*, 268 Fed. 305 (C.A. 5th). Accordingly, it is clear that the bankruptcy court had no jurisdiction over the assets acquired by the debtor subsequent to the bankruptcy proceedings.

2. Section 17 a (1) of the Bankruptcy Act, as amended (Appendix, *infra*, p. 9), specifically provides that a discharge in bankruptcy does not release a bankrupt from debts due as a tax levied by the United States. Debts which under Section 17 are not dischargeable are specifically excluded from discharge by the confirmation of an arrangement under the provisions of Section 371 of the

Bankruptcy Act, as amended (Appendix, *infra*, p. 9). The bankruptcy court therefore lacked authority to discharge the debtor from its obligation for federal taxes; and since the debtor's after-acquired property was not covered by the order confirming the plan of arrangement, the court had no jurisdiction to restrain the Collector from asserting a claim for taxes and filing tax liens against this property.

3. There are no conflicting decisions on this point. *In re New York, N. H. & H. R. Co.*, 105 F. Supp. 413 (D. Conn.), affirmed *per curiam*, 197 F. 2d 428 (C.A. 2d), relied on by the taxpayer (Pet. 7), is inapposite here. That case involved tax liens for assessments by the City of New York upon improvements to real property. The tax liens were enforceable exclusively against the property affected and did not constitute a personal obligation of the property owner enforceable against any of its other assets. Thus, no question of the nondischargeability of a debt for taxes was presented. Moreover, that case concerned property which had been conveyed to a reorganized railroad company in proceedings under Section 77 of the Bankruptcy Act and did not involve after-acquired property, as is the case here. Similarly, none of the other decisions cited by the taxpayer (Pet. 7) dealt with the question of a bankruptcy court's jurisdiction to interfere with the collection of a nondischargeable debt for taxes from after-acquired property of a debtor where, as here, both the property af-

fected and the assessment and liens for taxes are wholly outside the bankruptcy proceedings.

CONCLUSION

The decision below is correct, and there is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APRIL 1954

APPENDIX

Bankruptcy Act, c. 541, 30 Stat. 544 [as amended by Sec. 1 of the Act of June 22, 1938, c. 575, 52 Stat. 840]:

> Sec. 17. *Debts Not Affected by a Discharge.* —a. A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as (1) are due as a tax levied by the United States * * *
>
> (11 U.S.C. 1946 ed., Sec. 35.)
>
> Sec. 371. The confirmation of an arrangement shall discharge a debtor from all his unsecured debts and liabilities provided for by the arrangement, except as provided in the arrangement or the order confirming the arrangement, including the claims specified in section 354 of this Act, but excluding such debts as, under section 17 of this Act, are not dischargeable.
>
> (11 U.S.C. 1946 ed., Sec. 771.)

Internal Revenue Code:

> SEC. 3670. PROPERTY SUBJECT TO LIEN.
>
> If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to

property, whether real or personal, belonging to such person.

(26 U.S.C. 1946 ed., Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(26 U.S.C. 1946 ed., Sec. 3671.)

SEC. 3780 [As added by Sec. 4(a), Tax Adjustment Act of 1945, c. 340, 59 Stat. 517]. TENTATIVE CARRY-BACK ADJUSTMENTS.

* * * * *

(c) *Assessment of Erroneous Allowances.*— If the Commissioner determines that the amount applied, credited or refunded under subsection (b) is in excess of the overassessment attributable to the carry-back with respect to which such amount was applied, credited or refunded, he may assess the amount of the excess as a deficiency as if it were due to a mathematical error appearing on the face of the return, as provided in section 272(f). Upon making such assessment, the Commissioner shall schedule as an overassessment the decrease in any other tax resulting from the adjustments reflected in the computation of the deficiency.

(26 U.S.C. 1946 ed., Sec. 3780.)

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DENIED